

Court of Appeals, State of Michigan

ORDER

Christopher Lee Duncan v State of Michigan

Docket No. 278652

LC No. 07-00242-CZ

Patrick M. Meter
Presiding Judge

Donald S. Owens

Alton T. Davis
Judges

The Court orders that the motion to affirm pursuant to MCR 7.211(C)(3) is DENIED for failure to persuade the Court that it is manifest that the question to be reviewed is so unsubstantial as to need no argument or formal submission or was not properly raised.

Davis, J. would GRANT the motion to affirm.

Our Supreme Court has explained that “[w]here it is alleged that the state, by virtue of custom or policy, has violated a right conferred by the Michigan Constitution, governmental immunity is not available in a state court action.” *Smith v Dep’t of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987), *aff’d sub nom Will v Dep’t of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989). Furthermore, “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office,” which “is no different from a suit against the State itself.” *Will*, *supra* at 71. The trial court correctly denied defendants’ motion for summary disposition on the basis of governmental immunity.

Defendants have cited no authority that would make the government tort liability act, MCL 691.1407, applicable to an action alleging that the state, by custom or policy, has violated rights conferred by the Michigan Constitution. No other potential issues for appeal are before the Court at this time, because under MCR 7.203(A)(1), an appeal from an order denying summary disposition is limited to the portion of the order to which there is an appeal as of right. *Pierce v Lansing*, 265 Mich App 174, 182; 649 NW2d 65 (2005). Therefore, “this Court does not have the authority to consider issues beyond the portion of the trial court’s order denying the defendant’s claim of governmental immunity.”



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 07 2007
Date

Sandra Schultz Mengel
Chief Clerk